

## **AGENDA**

### ***Commuter Rail Committee Meeting***

**May 24, 2007**

**9:00 a.m.**

#### **Location**

SANBAG Office

Super Chief Conference Room

1170 West 3<sup>rd</sup> St., 2<sup>nd</sup> Fl.

San Bernardino, CA

### ***Commuter Rail Committee Membership***

#### **Chair**

Mayor Pro Tem Patricia Gilbreath  
*City of Redlands*

Mayor Robert Christman  
*City of Loma Linda*

#### **Vice Chair**

Mayor Pro Tem Lee Ann Garcia  
*City of Grand Terrace*

Mayor Paul Eaton  
*City of Montclair*

Mayor Kelly Chastain  
*City of Colton*

Mayor Patrick Morris  
*City of San Bernardino*

Mayor Paul Leon  
*City of Ontario*

Mayor Pro Tem Diane Williams  
*City of Rancho Cucamonga*

*San Bernardino Associated Governments (SANBAG) is a council of governments formed in 1973 by joint powers agreement of the cities and the County of San Bernardino. SANBAG is governed by a Board of Directors consisting of a mayor or designated council member from each of the twenty-four cities in San Bernardino County and the five members of the San Bernardino County Board of Supervisors.*

*In addition to SANBAG, the composition of the SANBAG Board of Directors also serves as the governing board for several separate legal entities listed below:*

***The San Bernardino County Transportation Commission***, which is responsible for short and long range transportation planning within San Bernardino County, including coordination and approval of all public mass transit service, approval of all capital development projects for public transit and highway projects, and determination of staging and scheduling of construction relative to all transportation improvement projects in the Transportation Improvement Program.

***The San Bernardino County Transportation Authority***, which is responsible for administration of the voter-approved half-cent transportation transactions and use tax levied in the County of San Bernardino.

***The Service Authority for Freeway Emergencies***, which is responsible for the administration and operation of a motorist aid system of call boxes on State freeways and highways within San Bernardino County.

***The Congestion Management Agency***, which analyzes the performance level of the regional transportation system in a manner which ensures consideration of the impacts from new development and promotes air quality through implementation of strategies in the adopted air quality plans.

***As a Subregional Planning Agency***, SANBAG represents the San Bernardino County subregion and assists the Southern California Association of Governments in carrying out its functions as the metropolitan planning organization. SANBAG performs studies and develops consensus relative to regional growth forecasts, regional transportation plans, and mobile source components of the air quality plans.

*Items which appear on the monthly Board of Directors agenda are subjects of one or more of the listed legal authorities. For ease of understanding and timeliness, the agenda items for all of these entities are consolidated on one agenda. Documents contained in the agenda package are clearly marked with the appropriate legal entity.*

**San Bernardino Associated Governments  
County Transportation Commission  
County Transportation Authority  
Service Authority for Freeway Emergencies  
County Congestion Management Agency**

***Commuter Rail Committee Meeting***

**May 24, 2007  
9:00 a.m.**

**Location:** SANBAG Office, 1170 West 3<sup>rd</sup> St., 2<sup>nd</sup> Fl., San Bernardino

**R.S.V.P. by Tuesday, May 22<sup>nd</sup> to Daylene at (909) 884-8276**

**CALL TO ORDER**

(Meeting Chaired by Mayor Pro Tem Patricia Gilbreath)

- I. Attendance
- II. Announcements
- III. Agenda Notices/Modifications - Daylene Burris

**1. Possible Conflict of Interest Issues for the Commuter Rail Committee Meeting of May 24, 2007** Pg. 5

Note agenda item contractors, subcontractors and agents, which may require member abstentions due to conflict of interest and financial interests. Committee Member abstentions shall be stated under this item for recordation on the appropriate item.

**Notes/Actions**

## **Consent Calendar**

### **2. Commuter Rail Committee Attendance Roster**

Pg. 6

A quorum shall consist of a majority of the membership of each Policy Committee, except that all County Representatives shall be counted as one for the purpose of establishing a quorum.

## **Discussion Items**

### **3. Amendment to the SANBAG Fiscal Year 2008-2012 Passenger Rail Short Range Transit Plan (SRTP)**

Pg. 8

1. Approve Amendment to the SANBAG Fiscal Year 2008-2012 Passenger Rail SRTP to provide \$3.0 million of Additional Funding for the Purchase of Option Passenger Cars for Metrolink, as identified in the Financial Impact Section.
2. Direct staff to include the additional \$3.0 million in the SANBAG Fiscal Year 2007/2008 Budget Task 3790800 – Commuter Rail Capital Expenses for a new total of \$8,264,303.

### **4. Financial Commitment to the Southern California Regional Rail Authority (SCRRA) based upon the SCRRA Fiscal Year 2007/2008 Preliminary Budget**

Pg. 4

1. Approve the Fiscal Year 2007/2008 operating assistance financial contribution to the SCRRA in the amount of \$6,801,600 from the Valley Local Transportation Fund (LTF) Apportionment as identified in the Financial Impact Section.
2. Approve the Fiscal Year 2007/2008 capital assistance financial contribution to the SCRRA in the amount of \$11,810,116 as identified in the Financial Impact Section.

**Discussion Items Continued....****5. Amendment to Agreement 04-040 with the City of San Bernardino Pg. 13**

1. Approve Amendment No. 5 to Cooperative Agreement 040-040 with the City of San Bernardino increasing the local match funding for the construction of a multi-level parking structure at the San Bernardino Metrolink station in the amount of \$3,500,000 for a new contract authority of \$5,543,074; and
2. Approve Amendment to Task Budget 37907000 – Commuter Rail Capital Expenses, increasing the budget authority by \$3,500,000 for a new total of \$5,878,775 as identified in the Financial Impact Section.

**6. Memorandum of Understanding (MOU) among the Southern California Association of Government, County Transportation Commissions and Municipal Transit Operators for the Federal Transit Administration (FTA) Large Urbanized Area Formula Grant Program Pg. 19**

Approve and authorize the Executive Director to sign MOU, Agreement C07229, among SCAG, the County Transportation Commissions and Municipal Transit Operators for the FTA Large Urbanized Area Formula Grant Program.

**Public Comments**

7. Additional Items from Committee Members
8. Brief Comments by the General Public

**Additional Information****Acronym List**

Pg. 30

**ADJOURNMENT**

Complete packages of the SANBAG agenda are available for public review at the SANBAG offices and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov). Staff reports for items may be made available upon request. For additional information call (909) 884-8276.

## Meeting Procedures and Rules of Conduct

### **Meeting Procedures**

The Ralph M. Brown Act is the state law which guarantees the public's right to attend and participate in meetings of local legislative bodies. These rules have been adopted by the Board of Directors in accordance with the Brown Act, Government Code 54950 et seq., and shall apply at all meetings of the Board of Directors and Policy Committees.

### **Accessibility**

The SANBAG meeting facility is accessible to persons with disabilities. If assistive listening devices or other auxiliary aids or services are needed in order to participate in the public meeting, requests should be made through the Clerk of the Board at least three (3) business days prior to the Board meeting. The Clerk's telephone number is (909) 884-8276 and office is located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino, CA.

**Agendas** – All agendas are posted at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino at least 72 hours in advance of the meeting. Staff reports related to agenda items may be reviewed at the SANBAG offices located at 1170 W. 3<sup>rd</sup> Street, 2<sup>nd</sup> Floor, San Bernardino and our website: [www.sanbag.ca.gov](http://www.sanbag.ca.gov).

**Agenda Actions** – Items listed on both the "Consent Calendar" and "Items for Discussion" contain suggested actions. The Board of Directors will generally consider items in the order listed on the agenda. However, items may be considered in any order. New agenda items can be added and action taken by two-thirds vote of the Board of Directors.

**Closed Session Agenda Items** – Consideration of closed session items *excludes* members of the public. These items include issues related to personnel, pending litigation, labor negotiations and real estate negotiations. Prior to each closed session, the Chair will announce the subject matter of the closed session. If action is taken in closed session, the Chair may report the action to the public at the conclusion of the closed session.

**Public Testimony on an Item** – Members of the public are afforded an opportunity to speak on any listed item. Individuals wishing to address the Board of Directors or Policy Committee Members should complete a "Request to Speak" form, provided at the rear of the meeting room, and present it to the Clerk prior to the Board's consideration of the item. A "Request to Speak" form must be completed for *each* item an individual wishes to speak on. When recognized by the Chair, speakers should be prepared to step forward and announce their name and address for the record. In the interest of facilitating the business of the Board, speakers are limited to three (3) minutes on each item. Additionally, a twelve (12) minute limitation is established for the total amount of time any one individual may address the Board at any one meeting. The Chair or a majority of the Board may establish a different time limit as appropriate, and parties to agenda items shall not be subject to the time limitations.

The Consent Calendar is considered a single item, thus the three (3) minute rule applies. Consent Calendar items can be pulled at Board member request and will be brought up individually at the specified time in the agenda allowing further public comment on those items.

**Agenda Times** – The Board is concerned that discussion take place in a timely and efficient manner. Agendas may be prepared with estimated times for categorical areas and certain topics to be discussed. These times may vary according to the length of presentation and amount of resulting discussion on agenda items.

**Public Comment** – At the end of the agenda, an opportunity is also provided for members of the public to speak on any subject within the Board's authority. *Matters raised under "Public Comment" may not be acted upon at that meeting. "Public Testimony on any Item" still apply.*

**Disruptive Conduct** – If any meeting of the Board is willfully disrupted by a person or by a group of persons so as to render the orderly conduct of the meeting impossible, the Chair may recess the meeting or order the person, group or groups of person willfully disrupting the meeting to leave the meeting or to be removed from the meeting. Disruptive conduct includes addressing the Board without first being recognized, not addressing the subject before the Board, repetitiously addressing the same subject, failing to relinquish the podium when requested to do so, or otherwise preventing the Board from conducting its meeting in an orderly manner. *Please be aware that a NO SMOKING policy has been established for meetings. Your cooperation is appreciated!*

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

### *Minute Action*

AGENDA ITEM: 1

**Date:** May 24, 2007

**Subject:** Information Relative to Possible Conflict of Interest

**Recommendation\*:** Note agenda items and contractors/subcontractors which may require member abstentions due to possible conflicts of interest.

**Background:** In accordance with California Government Code 84308, members of the Board of Directors may not participate in any action concerning a contract where they have received a campaign contribution of more than \$250 in the prior twelve months from an entity or individual. This agenda contains recommendations for action relative to the following contractors:

Item No.	Contract No.	Contractor/Agents	Subcontractors
	None	None	None

**Financial Impact:** This item has no direct impact on the 2006/2007 Budget.

**Reviewed By:** This item is prepared monthly for review by the Board of Directors and policy committee members.

**Responsible Staff:** Michael Bair, Director of Transit and Rail Programs

*Approved*  
*Commuter Rail Committee*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

**COMMUTER RAIL COMMITTEE ATTENDANCE ROSTER – 2007**

Name	Jan.	March	May	July	Sept.	Nov.
<b>Pat Gilbreath</b>	X	X				
<b>Lee Ann Garcia</b>	X	X				
<b>Kelly Chastain</b> (Appointed February 2007)						
<b>Robert Christman</b>	X	X				
<b>Paul Eaton</b>		X				
<b>Paul Leon</b> (Appointed April 2007)						
<b>Patrick Morris</b> (Appointed May 2006)	X	X				
<b>Diane Williams</b>	X	X				

Commuter Rail Meetings are held on odd months



# **COMMUTER RAIL COMMITTEE ATTENDANCE ROSTER – 2006**

Name	Jan.	March	April	July	Sept.	Oct.	Nov.
<b>Pat Gilbreath</b>	X	X	X	X	X	X	X
<b>Lee Ann Garcia</b>	X			X		X	X
<b>Paul Biane</b>	X						
<b>Robert Christman</b>	X	X	X	X		X	X
<b>Paul Eaton</b>	X	X	X	X	X	X	X
<b>Patrick Morris</b> (Appointed May 2006)						X	X
<b>Alan Wapner</b> (Appointed May 2006)					X		X
<b>Diane Williams</b>	X	X	X	X	X	X	X

Commuter Rail Meetings are held on odd months

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 3

**Date:** May 24, 2007

**Subject:** Amendment to the SANBAG Fiscal Year 2008-2012 Passenger Rail Short Range Transit Plan (SRTP)

- Recommendation:**\*
1. Approve Amendment to the SANBAG Fiscal Year 2008-2012 Passenger Rail SRTP to provide \$3.0 million of Additional Funding for the Purchase of Option Passenger Cars for Metrolink, as identified in the Financial Impact Section.
  2. Direct staff to include the additional \$3.0 million in the SANBAG Fiscal Year 2007/2008 Budget Task 37908000 – Commuter Rail Capital Expenses for a new total of \$8,264,303.

**Background:** An amendment to the Fiscal Year 2008-2012 Passenger Rail SRTP is necessary to add \$3.0 million for the Metrolink option to purchase additional passenger cars. This is a project that had been previously approved in the prior SRTP for Fiscal Year 2007/2008 and was inadvertently omitted from the most recently developed plan. Approval of this amendment will increase the total contribution for option cars to \$8.5 million.

This amendment will also require an increase of \$3.0 million in the proposed Fiscal Year 2007/2008 Task 37908000 – Commuter Rail Capital Expenses Budget, bringing it to a new total of \$8,264,303.

\*

*Approved*  
*Commuter Rail Committee*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

Commuter Rail Agenda Item

May 24, 2007

Page 2

**Financial Impact:** This item is not consistent with the proposed Fiscal Year 2007/2008 Budget. As noted above, an increase of \$3.0 million in Task 37908000 – Commuter Rail Capital Expenses will be required. The additional funding will increase the task budget authority to \$8,264.303. The funding sources will be \$1.5 million in Rail Asset Revenue and \$1.5 million in State Transit Assistance Funds (STAF).

**Reviewed By:** This item will be reviewed by the Commuter Rail Committee on May 24, 2007.

**Responsible Staff:** Michael Bair, Director of Transit and Rail Programs

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 4

**Date:** May 24, 2007

**Subject:** Financial Commitment to the Southern California Regional Rail Authority (SCRRA) based upon the SCRRA Fiscal Year 2007/2008 Preliminary Budget

**Recommendation:\*** 1. Approve the Fiscal Year 2007/2008 operating assistance financial contribution to the SCRRA in the amount of \$6,801,600 from the Valley Local Transportation Fund (LTF) Apportionment as identified in the Financial Impact Section.

2. Approve the Fiscal Year 2007/2008 capital assistance financial contribution to the SCRRA in the amount of \$11,810,116 as identified in the Financial Impact Section.

**Background:** The Joint Powers Agreement forming the Southern California Regional Rail Authority (SCRRA) requires that a preliminary Budget be presented to the member agencies by May 1<sup>st</sup> of each year. On April 27<sup>th</sup> the SCRRA Board authorized the release of the Fiscal Year 2007/2008 Preliminary Budget (copies have been included with the agenda). Each member agency must approve its contribution to the budget before the adoption of a Final Budget by the SCRRA Board no later than June 30<sup>th</sup>.

\*

*Approved*  
*Commuter Rail Committee*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

**SCRRA Fiscal Year 2007/2008 Preliminary Budget Highlights:**

The SCRRA Fiscal Year 2007/2008 Preliminary Budget of \$582.6 million is comprised of an Operating Budget of \$145.1 million and a Capital Budget of \$437.5 million.

The Preliminary Operating Budget of \$145.1 million reflects a \$10.3 million increase (7.7%) over the Fiscal Year 2006/2007 Final Budget. A portion of this increase is related to the increase in weekend service on the Antelope Valley (including new service on Sundays) and San Bernardino Lines. The San Bernardino Line will see an increase of two trains on Sundays. Due to the significant constraints on equipment availability, no new weekday service is currently planned.

The Preliminary Budget anticipates the SCRRA Board's approval of the continuation of 10-year phase-in of the distance-based fare structure approved in 2004. Under that phase-in process, the average fare increase would be 3.5% each year with no station-pair fare increasing by more than 8.5%. As a result, fare revenue is expected to increase by \$7.8 million (13.3%) for a total of \$67.2 million. Other revenues (dispatch and maintenance of way) received from the two railroads operating over member agency rights of way will total \$14 million. The forecasted increase in these revenues will cover 78% of the total increase in operating costs and comprise 56% of the total operating revenue.

Fiscal Year 2007/2008 will be the first year that the agreed upon formula for allocating agency costs to the member agencies is in effect. SANBAG's share of train operations and services, maintenance-of-way, administration and services, and insurance for next year is \$17,716,300. Revenues used to offset those expenses, including fare revenue and revenues received for dispatching, maintenance and other operations, will total \$10,914,700. As a result of the formula change, SANBAG's contribution for the next fiscal year is \$6,801,600 or \$50,800 less than the current fiscal year. The funding source will be Valley Local Transportation Funds (LTF).

The Preliminary Capital Budget of \$437.5 million is comprised of two components; rehabilitation and renovation and new capital. The rehabilitation/renovation portion totals \$60.0 million of which \$28.5 million is for new projects. The new capital portion totals \$377.5 million of which \$375.4 million is from prior years – the bulk of which is the purchase of rolling stock (\$203.4 million). The Preliminary Capital Budget Fiscal Year 2007-08 Project Authorization incorrectly identifies \$1.788 million for sealed corridor work in San Bernardino County. The correct amount should be \$500,000. The \$1.788 million will be used to install fiber-optic conduit from Pomona to Rialto. Also included in the new projects listing is SANBAG's annual contribution to the rolling stock replacement fund. Staff will work with SCRRA to insure consistency in project description and amounts. SANBAG has requested that

\$3.0 million be added to the Rolling Stock Procurement Project instead of the \$2.69 million identified in the Preliminary Capital Budget. SANBAG's contribution to the renovation/rehabilitation budget will be \$3,357,516. The table below provides a listing of all new capital projects (or additional funding) that will be required from SANBAG as well as the source of funds.

**Fiscal Year 2007/2008 Capital Contribution from SANBAG**

Project	Total	FTA 5307	FTA 5309	RIP	Rail Asset	STAF	LTF
Renovation/Rehabilitation	\$3,357,516		\$2,730,813			\$626,703	
Communications (Fiber optic conduit)	\$1,788,000	\$1,430,400				\$357,600	
Rolling Stock - Option	\$3,000,000				\$1,500,000	\$1,500,000	
San Gabriel Subdivision - Sealed Corridor	\$500,000		\$400,000				\$100,000
Equipment Replacement Fund	\$315,600					\$315,600	
<b>Subtotal SCRRA Capital</b>	<b>\$8,961,116</b>	<b>\$1,430,400</b>	<b>\$3,130,813</b>		<b>\$1,500,000</b>	<b>\$2,799,903</b>	<b>\$100,000</b>
Rancho Cucamonga Pedestrian Undercrossing - Additional Funding	\$2,849,000			\$2,849,000			
<b>Total SCRRA Capital</b>	<b>\$11,810,116</b>	<b>\$1,430,400</b>	<b>\$3,130,813</b>	<b>\$2,849,000</b>	<b>\$1,500,000</b>	<b>\$2,799,903</b>	<b>\$100,000</b>

While not considered part of the SCRRA Capital Budget, SCRRA will be the applicant for the additional \$2,849,000 in RIP funds the Board approved for the Rancho Cucamonga Pedestrian Undercrossing. This would increase the total authorized level of capital funding for SCRRA to \$11,810,116.

**Financial Impact:** The FTA funds required are consistent with the estimated apportionment of the funds to the San Bernardino Valley. As noted above, the FTA and RIP funds will be applied for by SCRRA and will not pass through the agency budget. However, the local funds needed for operating (\$6,801,600 in LTF) and capital (\$2,799,903 in STAF, \$1,500,000 in Rail Asset and \$100,000 LTF) will pass through the agency budget and are consistent with the proposed Tasks 37708000 - Commuter Rail Operating Expenses and 37908000 - Commuter Rail Capital Expenses as amended in the previous agenda item.

**Reviewed By:** This item will be reviewed by the Commuter Rail Committee on May 24, 2007.

**Responsible Staff:** Michael Bair, Director of Transit and Rail Programs

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 5

**Date:** May 24, 2007

**Subject:** Amendment to Agreement 04-040 with the City of San Bernardino

**Recommendation:\***

1. Approve Amendment No. 5 to Cooperative Agreement 04-040 with the City of San Bernardino increasing the local match funding for the construction of a multi-level parking structure at the San Bernardino Metrolink station in the amount of \$3,500,000 for a new contract authority of \$5,543,074; and
2. Approve Amendment to Task Budget 37907000 - Commuter Rail Capital Expenses, increasing the budget authority by \$3,500,000 for a new total of \$5,878,775 as identified in the Financial Impact Section.

**Background:** In December 2003 the Board approved Cooperative Agreement 04-040 with the City of San Bernardino. The original agreement established the roles and responsibilities for the San Bernardino Metrolink station maintenance and security and the rehabilitation and use of the historic San Bernardino Santa Fe Depot.

In March 2004 the Board approved Amendment No. 1 to Cooperative Agreement 04-040 which increased the Agency's financial contribution toward the depot rehabilitation by \$160,000 for a new total of \$1,118,159.

In September 2004 the Board approved Amendment No. 2 to Cooperative Agreement 04-040 which changed the SANBAG address for serving notice to the depot and revised the method by which the two parties pay for Depot Common Area and Non-Leased Space Expenses. There was no change in the contract authority amount.

\*

*Approved*  
*Commuter Rail Committee*

*Date:* \_\_\_\_\_

*Moved:* \_\_\_\_\_ *Second:* \_\_\_\_\_

*In Favor:* \_\_\_\_\_ *Opposed:* \_\_\_\_\_ *Abstained:* \_\_\_\_\_

*Witnessed:* \_\_\_\_\_

In October 2005 the Board approved Amendment No. 3 to Cooperative Agreement 04-040 which established the roles and responsibilities for the construction of a temporary parking lot and a multi-level parking structure at the San Bernardino Metrolink station. This amendment included the Agency's provision of \$711,140 in local matching funds for the \$5,488,860 in Congestion Mitigation and Air Quality (CMAQ) funds previously approved by the Board for the parking structure project. Amendment No. 3 increased the contract authority to \$1,829,299.

Also in October 2005 the Board approved an additional allocation of \$1,650,000 in CMAQ funds for the San Bernardino Metrolink station parking structure project, but at that time no additional local match could be provided.

In August 2006 the Board approved Amendment No. 4 that provided an additional \$213,775 in LTF Rail revenues as the local match for the additional CMAQ funding in the amount of was granted in October 2005. The total budget for the multi-level parking structure was \$8,063,775 (\$7,138,860 CMAQ and \$924,915 LTF Rail).

Amendment No 5 is required primarily to reflect the recent increase in construction materials, but it also includes additional cost related to the construction of a replacement storm drain and a retaining wall adjacent to the Mount Vernon Viaduct. Including a 10% contingency, the total project cost is estimated to be \$11,563,775. The additional \$3,500,000 is being made available from Rail Asset Revenues.

**Financial Impact:** Amendment No. 5 to Cooperative Agreement 04-040 is not consistent with the Fiscal Year 2006/2007 Budget. An amendment to Task 37907000 – Commuter Rail Capital Expenses increasing the budget authority by \$3,500,000 in Rail Asset Revenue for a new total of \$5,878,775 is necessary. Amendment No. 5 increases the agency's financial contribution toward the parking structure by \$3,500,000 for a new total of \$4,424,915 and increases to total contract authority (including funds previously expended on the depot renovation) to \$5,543,074.

**Reviewed By:** This item will be reviewed by the Commuter Rail Committee on May 24, 2007. The agreement has also been reviewed and approved as to form by SANBAG Counsel.

**Responsible Staff:** Michael Bair, Director of Transit and Rail Programs



**SANBAG Contract No. 04-040-5**

by and between

San Bernardino County Transportation Commission

and

City of San Bernardino

for

Assignment of roles and responsibilities for the design and construction of a temporary parking lot and a multi-level parking structure at the San Bernardino Metrolink Station

**FOR ACCOUNTING PURPOSES ONLY**

<input checked="" type="checkbox"/> Payable	Vendor Contract # _____	Retention:	<input type="checkbox"/> Original
<input type="checkbox"/> Receivable	Vendor ID _____	<input type="checkbox"/> Yes _____ % No	<input checked="" type="checkbox"/> Amendment

Notes:

Original Contract:	\$ <u>958,159</u>	Previous Amendments Total:	\$ <u>1,084,915</u>
Contingency Amount:	\$ _____	Previous Amendments Contingency Total:	\$ _____
		Current Amendment:	\$ <u>3,500.00</u>
		Current Amendment Contingency:	\$ _____

Contingency Amount requires specific authorization by Task Manager prior to release.

**Contract TOTAL → \$ 5,543,074**

↓ Please include funding allocation for the original contract or the amendment.


<u>Task</u>	<u>Cost Code</u>	<u>Funding Sources</u>	<u>Grant ID</u>	<u>Amounts</u>
<u>37907000</u>	<u>5011</u>	<u>Rail Asset Revenue</u>	_____	<u>\$ 3,500,000</u>
Original Board Approved Contract Date:	<u>12/3/03</u>	Contract Start:	<u>12/3/03</u>	Contract End: <u>Open</u>
New Amend. Approval (Board) Date:	<u>6/6/07</u>	Amend. Start:	<u>6/6/07</u>	Amend. End: <u>Open</u>

**If this is a multi-year contract/amendment, please allocate budget authority among approved budget authority and future fiscal year(s)-unbudgeted obligations:**

<b>Approved Budget Authority →</b>	Fiscal Year: <u>2006/2007</u> \$ <u>3,500,000</u>	<b>Future Fiscal Year(s) – Unbudgeted Obligation →</b>	\$ _____
------------------------------------	--	--	----------

Is this consistent with the adopted budget? ☐ Yes ☒ No

If yes, which Task includes budget authority?

If no, has the budget amendment been submitted? ☒ Yes ☐ No**CONTRACT MANAGEMENT****Please mark an "X" next to all that apply:**☒ Intergovernmental ☐ Private ☐ Non-Local ☒ Local ☐ Partly LocalDisadvantaged Business Enterprise: ☐ No ☐ Yes \_\_\_\_\_ %Task Manager: **Michael Bair**Contract Manager: **Michael Bair**  
Task Manager Signature

Date

  
Contract Manager Signature

Date

Chief Financial Officer Signature

Date

**AMENDMENT NO. 5**  
**TO COOPERATIVE AGREEMENT 04-040**

**between the**

**SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION**  
**and**

**CITY OF SAN BERNARDINO**

**THIS AMENDMENT NUMBER 5** to Cooperative Agreement 04-040 is hereby made and entered into and effective this 6th day of June, 2007, by and between the SAN BERNARDINO COUNTY TRANSPORTATION COMMISSION (hereinafter referred to as "SANBAG") and the CITY OF SAN BERNARDINO (hereinafter referred to as "CITY"), with regard to the San Bernardino Metrolink station and Santa Fe Depot located in the CITY.

**WHEREAS**, SANBAG and CITY previously entered into Cooperative Agreement 04-040 on December 3, 2003, specifying the roles and responsibilities for the provision of maintenance and security at the San Bernardino Metrolink station and the rehabilitation of the Santa Fe Depot; and

**WHEREAS**, in March 2004, SANBAG and CITY approved Amendment Number 1 to Cooperative Agreement 04-040 amending Exhibit "G" to reflect an increase in the SANBAG financial contribution for the rehabilitation of the Santa Fe Depot; and

**WHEREAS**, in September 2004, SANBAG and CITY approved Amendment Number 2 to Cooperative Agreement 04-040 changing the address for SANBAG and revising the timing in which SANBAG and CITY pay for Santa Fe Depot Common Area and Non-Leased Space Expenses; and

**WHEREAS**, in October 2005, SANBAG and CITY approved Amendment Number 3 to Cooperative Agreement 04-040 identifying the roles and responsibilities, including financial obligations, between SANBAG and CITY for the design and construction of a temporary parking lot and a multi-level parking structure at the San Bernardino Metrolink station; and

**WHEREAS**, in October 2005, the SANBAG Board approved an additional allocation of Congestion Mitigation and Air Quality (CMAQ) funds for the multi-level parking structure project; and

**WHEREAS**, in June 2006, the SANBAG Board approved additional CMAQ local match funds as part of the Fiscal Year 2006/2007 Budget; and

**WHEREAS**, in August 2006, the SANBAG Board approved an increase in local funds necessary to match the approved amount of CMAQ funds, resulting in a total project budget of \$8,063,775; and

**WHEREAS**, the CITY has completed the design of the parking structure to the 90% level and determined that additional funding will be necessary.

**NOW, THEREFORE**, it is agreed that Section 6.10 of Cooperative Agreement 04-040 is replaced as set forth below:

## **VI**

### **COMMUTER RAIL STATION**

- 6.10** Permanent Multi-Level Parking Structure Funding. Funding for the Permanent Multi-Level Parking Structure in the amount of \$11,563,775 (\$7,138,860 CMAQ, \$924,915 LTF Rail, and \$3,500,000 in Rail Asset Revenue) has been identified as being available. CITY shall be responsible for any and all actions required for the obligation and receipt of the \$7,138,860 in CMAQ funds approved for this project. Upon the execution of Amendment Number 3 SANBAG has provided CITY with \$103,230 as the local match for CMAQ funds approved for PS&E and environment clearance work. CITY shall provide a copy of authorization to proceed with construction with the remaining CMAQ funds to SANBAG. Within thirty (30) days of receipt of such authorization, SANBAG shall provide CITY with the remaining CMAQ local match of LTF Rail in the amount of \$821,685. The \$3,500,000 in Rail Asset Revenue shall be paid to CITY within thirty (30) days of receipt of a monthly invoice for construction management and construction expenses. CITY shall copy SANBAG on all requests for reimbursement of CMAQ funds. Upon project close-out, CITY shall provide an accounting of the funds used with any remaining local match funds advanced to CITY by SANBAG clearly identified. Within thirty (30) days of project close-out, CITY shall return to SANBAG any unspent local match funds.

All other terms and conditions contained in SANBAG Cooperative Agreement 04-040 as previously amended by Amendments 1, 2, and 3 shall remain in full force and effect.

IN WITNESS THEREOF, the authorized parties have signed below;

**SAN BERNARDINO COUNTY  
TRANSPORTATION COMMISSION**

**CITY OF SAN BERNARDINO**

\_\_\_\_\_  
Dennis Hansberger  
President

\_\_\_\_\_  
Patrick J. Morris  
Mayor

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to form:

Approved as to form:

\_\_\_\_\_  
Jean-Rene Basle  
SANBAG Counsel

\_\_\_\_\_  
James F. Penman  
City Attorney

- San Bernardino County Transportation Commission ■ San Bernardino County Transportation Authority  
■ San Bernardino County Congestion Management Agency ■ Service Authority for Freeway Emergencies

## *Minute Action*

AGENDA ITEM: 6

**Date:** May 24, 2007

**Subject:** Memorandum of Understanding (MOU) among the Southern California Association of Governments, County Transportation Commissions and Municipal Transit Operators for the Federal Transit Administration (FTA) Large Urbanized Area Formula Grant Program

**Recommendation:**\* Approve and authorize the Executive Director to sign MOU, Agreement C07229, among SCAG, the County Transportation Commissions and Municipal Transit Operators for the FTA Large Urbanized Area Formula Grant Program.

**Background:** The Southern California Association of Governments (SCAG) is the designated recipient for FTA Section 5307 Formula Funds apportioned to the Los Angeles-Long Beach-Santa Ana and Riverside-San Bernardino Urbanized Areas. SCAG is also the agency responsible for developing the Regional Transportation Plan (RTP) and Regional Transportation Improvement Program (RTIP). SANBAG, acting as the County Transportation Commission, is responsible for allocating the Section 5307 funds available to the San Bernardino Valley to eligible operators (Omnitrans and SCRRA) and approving projects utilizing those funds. The Commission is also responsible for insuring that the approved projects are included in the locally developed Transportation Improvement Program which are then recommended for inclusion in the RTIP. The transit operators are responsible identifying projects for which the Section 5307 funds will be used; formally applying for those funds in grants; and upon grant approval, completing those projects.

\*

*Approved*  
*Commuter Rail Committee*

*Date:* \_\_\_\_\_

*Moved:*

*Second:*

*In Favor:*

*Opposed:*

*Abstained:*

*Witnessed:* \_\_\_\_\_

**SANBAG Agreement C07229**

**MEMORANDUM OF UNDERSTANDING BETWEEN THE SOUTHERN CALIFORNIA  
ASSOCIATION OF GOVERNMENTS, COUNTY TRANSPORTATION COMMISSIONS  
AND MUNICIPAL TRANSIT OPERATORS FOR THE LARGE URBANIZED AREA  
FORMULA GRANT PROGRAM**

**RECITALS**

**WHEREAS**, the Southern California Association of Governments (SCAG) is a joint powers agency formed pursuant to Title 1, Division 7, Chapter 5 of the California Government Code (Section 6500 et seq.) and is the Metropolitan Planning Organization (MPO) recognized under 23 U.S.C. 134 and 49 U.S.C. 5303; and

**WHEREAS**, SCAG is responsible for developing Regional Transportation Plans and Regional Transportation Improvement Programs pursuant to 49 U.S.C. 5303 et seq., 23 U.S.C. 134 et seq., Cal Gov. Code Section 65080 et seq., Cal. Pub. Util. Code §130300 et seq., and corresponding Federal and State regulations and guidance; and

**WHEREAS**, pursuant to 49 U.S.C. §5307(a)(2), SCAG is the designated recipient of Federal Transit Agency (FTA) large urbanized area formula grants (hereinafter referred to as "5307 Program Funds") for the following large urbanized areas (UZAs) with populations of 200,000 or more, in the SCAG region: Los Angeles-Long Beach-Santa Ana, Riverside-San Bernardino, Indio-Cathedral City-Palm Springs, Lancaster-Palmdale, and Temecula-Murrieta; and

**WHEREAS**, the County Transportation Commissions (CTCs) are responsible for developing the short-range Transportation Improvement Program (TIP) in coordination with SCAG and the municipal transit operators in Los Angeles County, pursuant to Pub. Util. Code Section 130303 et seq., and to submit their TIPs to SCAG for recommended inclusion in the Regional Transportation Improvement Program (RTIP); and

**WHEREAS**, applicants for 5307 Program Funds include the following transit operators in the region: Orange County Transportation Authority (OCTA), Los Angeles County Metropolitan Transportation Authority (Metro), Omnitrans, Antelope Valley Transit, City of Arcadia, City of Claremont, City of Commerce, City of Culver City, Long Beach Public Transportation Corporation, City of La Mirada, City of Los Angeles Department of Transportation, City of Santa Monica, City of Santa Clarita, Foothill Transit, Gardena Municipal Bus Lines, City of Montebello, City of Norwalk, City of Torrance, Redondo Beach Wave, Riverside Transit Agency, SunLine Transit Agency, City of Corona, and City of Riverside, and the Southern California Regional Rail Authority (hereinafter referred to as "Applicants"); and

**WHEREAS**, OCTA, Metro, San Bernardino Associated Governments (SANBAG), and Riverside County Transportation Commission (RCTC), shall be responsible for allocating 5307 Program Funds, including identifying and programming projects in their

short-range TIPs submitted to SCAG and recommended for inclusion in the RTIP, to meet the federal transit enhancement requirements for large UZAs in their respective planning boundaries, and in accordance with the transportation improvement programming process and applicable Federal and State regulations and guidance; and

**WHEREAS**, SCAG intends to enter into this Memorandum of Understanding ("Agreement") with each Applicant, SANBAG, and RCTC, in order to clarify the roles and responsibilities of all parties with regard to implementation of the 5307 Program.

**NOW, THEREFORE IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS PROVIDED FOR HEREIN, SCAG, APPLICANTS, SANBAG, AND RCTC HEREBY AGREE AS FOLLOWS:**

### **Section 1**

1.1 Roles and Responsibilities of the County Transportation Commissions. OCTA, Metro, SANBAG, and RCTC, shall be responsible for allocating 5307 Program Funds which includes identifying and programming projects in their short-range TIPs and any updates submitted to SCAG and recommended for inclusion in the RTIP, to meet the federal transit enhancement requirements of 49 U.S.C. §5307(d)(1)(K), for large UZAs in their respective planning boundaries, and in accordance with the transportation improvement programming process under 49 U.S.C. §5303(j), 23 U.S.C. §134(j), Cal. Gov. Code §65082, Cal. Pub. Util. Code §130300 et seq., and applicable Federal and State regulations and guidance. Additionally, upon annual approval by each CTC of transit enhancement projects, each CTC shall submit to SCAG a list of such projects.

- a. By signing this Agreement, OCTA, Metro, SANBAG and RCTC each certify that it shall comply with 49 U.S.C. §5307(d)(1)(K), to the same extent as required by SCAG as the designated recipient of 5307 Program Funds, for large UZAs in their respective planning boundaries, and shall submit to SCAG any documentation requested by SCAG to assure the validity of such certification.

1.2 Role of SCAG. SCAG is responsible for development and approval of the RTIP. SCAG will prepare an MPO concurrence letter for approval of the 5307 Program grant for each Applicant, which shall be submitted to FTA during the application process, contingent upon the Applicant signing this Agreement, and further contingent upon SCAG's determination that the Applicant has included the required transit enhancement projects in its TIP submittals to SCAG in compliance with 49 U.S.C. §5307(d)(1)(K).

1.3 Annual Certifications and Assurances Regarding the 5307 Program. By signing this Agreement, each Applicant certifies that it shall comply with the applicable Annual Certifications and Assurances for the FTA 5307 Program (published

annually in the Federal Register), and agrees to forward to SCAG a signed copy of its Certifications and Assurances form each year prior to the time the Applicant receives its first FTA section 5307 grant award for the year.

- 1.4 Documentation. Each Applicant shall submit to SCAG any documentation requested by SCAG to assure the validity of all above certifications and assurances made by the Applicant.
- 1.5 Annual Transit Enhancement Reports. Each Applicant shall submit to SCAG an annual report, including an electronic version of the September 30th quarterly progress report filed with the FTA that contains the projects funded with 5307 Transit Enhancement funds as required under 49 U.S.C. § 5307(d)(1)(K) ("Annual Report").
  - a. The Annual Report shall contain the following information, and any additional information as may be required by SCAG or FTA:
    - 1) Name of grantee(s) expending the enhancement funds;
    - 2) UZA name and number for which the TE funds are being reported; and
    - 3) A listing of the FTA grant number(s) being reported, with their respective project budget line item (ALI Codes), project category, approved FTA amount, and description of the TE-funded projects.
  - b.. By October 30<sup>th</sup> of each year, the Annual Reports shall be submitted to the attention of Rosemary Ayala (or other person identified by SCAG), SCAG Lead Regional Planner.. SCAG shall promptly notify all parties in the event of a change in the person identified in this paragraph as the recipient of the Annual Reports. Upon receipt of the Annual Reports from each Applicant, SCAG shall submit such reports to FTA.

## **Section 2**

### **General Provisions**

- 2.1 Term of Agreement: This Agreement shall be effective as to each party on the date such party executes this Agreement, and continues in full force unless terminated in accordance with Section 2.7.
- 2.2 Drafting: This Agreement has been prepared by all parties and has been reviewed and endorsed by each.
- 2.3 Amendments: This Agreement may be amended only by the execution by all parties of a written amendment.



- 2.4 Jurisdiction and Venue: This Agreement shall be deemed an Agreement under the laws of the State of California, and for all purposes shall be interpreted in accordance with such laws. All parties hereby agree and consent to the exclusive jurisdiction of the courts of the State of California and that the venue of any action brought hereunder shall be in Los Angeles County, California.
- 2.5 Non-assignment. No party may assign this Agreement, or any part thereof, without the written consent of each party to this Agreement.
- 2.6 Indemnity. Each Applicant, RCTC and SANBAG agree to indemnify, defend and hold harmless SCAG, and its respective officers, agents, and employees from any and all claims, demands, costs, or liability arising from or connected with intentional or negligent acts, errors or omissions, or any violations of law (including non-compliance with Certifications and Assurances contained herein) attributable only to performance of the responsibilities as set forth in this MOU by the indemnifying party (Indemnitor) or its officers, agents, employees, contractors and subcontractors under this MOU, except to the extent caused by the negligence or willful misconduct of SCAG.
- 2.7 Withdrawal and Termination.
- a. Any party may withdraw from this Agreement upon thirty (30) days written notice to each party, providing that the notice of withdrawal set forth the effective date of withdrawal and the reason for withdrawal. Additionally, the notice of withdrawal shall provide that the parties during the period prior to the effective date of withdrawal meet to try to resolve any dispute, if applicable. In the event that the withdrawal is for cause, the withdrawal shall not be effective if the party cures the default in its performance within the thirty day period.
  - b. SCAG shall notify FTA of the withdrawal from this Agreement of any Applicant, and shall not be obligated to administer 5307 Program Funds for any Applicant which is not a party to this Agreement.
  - c. SCAG may terminate this Agreement at any time upon thirty (30) days written notice to each party, providing that the notice of termination sets forth the effective date of termination.
- 2.8 Notice. Any notice or notices required or permitted to be given pursuant to this Agreement may be personally served on the other party by the party giving such notice, or may be served by certified mail, return receipt requested, to the names and addresses attached as "Exhibit A."
- 2.9 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original, but all of which shall constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

The Southern California Association of Governments

By: \_\_\_\_\_  
Mark Pisano  
Executive Director

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Karen Tachiki  
Chief Legal Counsel

Date: \_\_\_\_\_

San Bernardino Association of Governments

By: \_\_\_\_\_  
Tony Grasso  
Executive Director

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_  
Jean-Rene Basle  
SANBAG Counsel

Date: \_\_\_\_\_

Omnitrans

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Durand Rall  
General Manager

Approved as to Form:

\_\_\_\_\_ Date: \_\_\_\_\_

Southern California Regional Rail Authority

By: \_\_\_\_\_  
David R. Solow  
Chief Executive Officer

Date: \_\_\_\_\_

Approved as to Form:

\_\_\_\_\_

Date: \_\_\_\_\_

## SANBAG Acronym List

1 of 2

AB	Assembly Bill
ACE	Alameda Corridor East
ACT	Association for Commuter Transportation
ADA	Americans with Disabilities Act
APTA	American Public Transportation Association
AQMP	Air Quality Management Plan
ATMIS	Advanced Transportation Management Information Systems
BAT	Barstow Area Transit
CAC	Call Answering Center
CALACT	California Association for Coordination Transportation
CALCOG	California Association of Councils of Governments
CALSAFE	California Committee for Service Authorities for Freeway Emergencies
CALTRANS	California Department of Transportation
CARB	California Air Resources Board
CEQA	California Environmental Quality Act
CHP	California Highway Patrol
CMAQ	Congestion Mitigation and Air Quality
CMP	Congestion Management Program
CNG	Compressed Natural Gas
COG	Council of Governments
CSAC	California State Association of Counties
CTA	California Transit Association
CTAA	Community Transportation Association of America
CTC	California Transportation Commission
CTC	County Transportation Commission
CTP	Comprehensive Transportation Plan
DMO	Data Management Office
DOT	Department of Transportation
E&H	Elderly and Handicapped
EIR	Environmental Impact Report
EIS	Environmental Impact Statement
EPA	United States Environmental Protection Agency
ETC	Employee Transportation Coordinator
FEIS	Final Environmental Impact Statement
FHWA	Federal Highway Administration
FSP	Freeway Service Patrol
FTA	Federal Transit Administration
FTIP	Federal Transportation Improvement Program
GFOA	Government Finance Officers Association
GIS	Geographic Information Systems
HOV	High-Occupancy Vehicle
ICMA	International City/County Management Association
ICTC	Interstate Clean Transportation Corridor
IEEP	Inland Empire Economic Partnership
ISTEA	Intermodal Surface Transportation Efficiency Act of 1991
IIP/ITIP	Interregional Transportation Improvement Program
ITS	Intelligent Transportation Systems
IVDA	Inland Valley Development Agency
JARC	Job Access Reverse Commute
LACMTA	Los Angeles County Metropolitan Transportation Authority
LNG	Liquefied Natural Gas
LTF	Local Transportation Funds
MAGLEV	Magnetic Levitation
MARTA	Mountain Area Regional Transportation Authority
MBTA	Morongo Basin Transit Authority
MDAB	Mojave Desert Air Basin
MDAQMD	Mojave Desert Air Quality Management District
MIS	Major Investment Study
MOU	Memorandum of Understanding

## SANBAG Acronym List

2 of 2

MPO	Metropolitan Planning Organization
MSRC	Mobile Source Air Pollution Reduction Review Committee
MTP	Metropolitan Transportation Plan
NAT	Needles Area Transit
OA	Obligation Authority
OCTA	Orange County Transportation Authority
OWP	Overall Work Program
PA&ED	Project Approval and Environmental Document
PASTACC	Public and Specialized Transportation Advisory and Coordinating Council
PDT	Project Development Team
PPM	Planning, Programming and Monitoring Funds
PSR	Project Study Report
PTA	Public Transportation Account
PVEA	Petroleum Violation Escrow Account
RCTC	Riverside County Transportation Commission
RDA	Redevelopment Agency
RFP	Request for Proposal
RIP	Regional Improvement Program
ROD	Record of Decision
RTAC	Regional Transportation Agencies' Coalition
RTIP	Regional Transportation Improvement Program
RTP	Regional Transportation Plan
RTPA	Regional Transportation Planning Agencies
SB	Senate Bill
SAFE	Service Authority for Freeway Emergencies
SANBAG	San Bernardino Associated Governments
SCAB	South Coast Air Basin
SCAG	Southern California Association of Governments
SCAQMD	South Coast Air Quality Management District
SCRRA	Southern California Regional Rail Authority
SED	Socioeconomic Data
SHA	State Highway Account
SHOPP	State Highway Operations and Protection Program
SOV	Single-Occupant Vehicle
S RTP	Short Range Transit Plan
STAF	State Transit Assistance Funds
STIP	State Transportation Improvement Program
STP	Surface Transportation Program
TAC	Technical Advisory Committee
TCM	Transportation Control Measure
TCRP	Traffic Congestion Relief Program
TDA	Transportation Development Act
TEA	Transportation Enhancement Activities
TEA-21	Transportation Equity Act for the 21 <sup>st</sup> Century
TIA	Traffic Impact Analysis
TMC	Transportation Management Center
TMEE	Traffic Management and Environmental Enhancement
TOC	Traffic Operations Center
TOPRS	Transit Operator Performance Reporting System
TSM	Transportation Systems Management
USFWS	United States Fish and Wildlife Service
UZAs	Urbanized Areas
VCTC	Ventura County Transportation Commission
VVTA	Victor Valley Transit Authority
WRCOG	Western Riverside Council of Governments

# ***San Bernardino Associated Governments***



## **MISSION STATEMENT**

To enhance the quality of life for all residents, San Bernardino Associated Governments (SANBAG) will:

- Improve cooperative regional planning
- Develop an accessible, efficient, multi-modal transportation system
- Strengthen economic development efforts
- Exert leadership in creative problem solving

To successfully accomplish this mission, SANBAG will foster enhanced relationships among all of its stakeholders while adding to the value of local governments.

Approved June 2, 1993  
Reaffirmed March 6, 1996